



6560-50-P

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

**[EPA-R06-OAR-2014-0626; FRL-9930-27-Region 6]**

**Approval and Promulgation of Implementation Plans; New Mexico; Revisions to the Particulate Matter Less than 2.5 Micrometers (PM<sub>2.5</sub>) Prevention of Significant Deterioration (PSD) Permitting Program State Implementation Plan (SIP)**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Direct final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is approving portions of two revisions to the New Mexico SIP for the permitting of PM<sub>2.5</sub> emissions submitted on May 23, 2011, and August 6, 2014. Together, these submittals revise the New Mexico PSD program to be consistent with the federal PSD regulations regarding the use of a significant impact level (SIL) or significant monitoring concentration (SMC) for PM<sub>2.5</sub> emissions. We are approving these SIP revisions to regulate PM<sub>2.5</sub> emissions in accordance with requirements of section 110 and part C of the Clean Air Act.

**DATES:** This rule is effective on **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]** without further notice, unless the EPA receives adverse comment by **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. If the EPA receives relevant adverse comment, we will

publish a timely withdrawal in the Federal Register informing the public that the rule will not take effect.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-R06-OAR-2014-0626, by one of the following methods:

- [www.regulations.gov](http://www.regulations.gov): Follow the on-line instructions.
- E-mail: Ms. Adina Wiley at [wiley.adina@epa.gov](mailto:wiley.adina@epa.gov)
- Mail: Ms. Adina Wiley, Air Planning Section (6PD-R), Environmental Protection Agency, 1445 Ross Avenue, Ste. 1200, Dallas, TX 75202-2733.
- Hand Delivery: Ms. Adina Wiley, Air Planning Section (6PD-R), Environmental Protection Agency, 1445 Ross Avenue, Ste. 700, Dallas, TX 75202-2733. Such deliveries are only accepted during the hours between 8:00 am and 4:00 pm weekdays, and not on legal holidays. Special arrangements should be made for deliveries of boxed information.

*Instructions:* Direct your comments to Docket ID No. EPA-R06-OAR-2014-0626. The EPA's policy is that all comments received will be included in the public docket without change and may be made available online at [www.regulations.gov](http://www.regulations.gov), including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through [www.regulations.gov](http://www.regulations.gov) or e-mail. The [www.regulations.gov](http://www.regulations.gov) website is an “anonymous access” system, which means the EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to the EPA without going through [www.regulations.gov](http://www.regulations.gov), your e-mail address will be automatically captured and included as part of

the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, the EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If the EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, the EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about the EPA's public docket visit the EPA Docket Center homepage at <http://www.epa.gov/epahome/dockets.htm>.

*Docket:* The index to the docket for this action is available electronically at [www.regulations.gov](http://www.regulations.gov) and in hard copy at EPA Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas. While all documents in the docket are listed in the index, some information may be publicly available only at the hard copy location (*e.g.*, copyrighted material), and some may not be publicly available at either location (*e.g.*, CBI).

**FOR FURTHER INFORMATION CONTACT:** Ms. Adina Wiley, 214-665-2115, [wiley.adina@epa.gov](mailto:wiley.adina@epa.gov). To inspect the hard copy materials, please schedule an appointment with Adina Wiley or Mr. Bill Deese at 214-665-7253.

**SUPPLEMENTARY INFORMATION:** Throughout this document, “we,” “us,” and “our” means the EPA.

## **I. Background**

### **A. CAA and SIPs**

Section 110 of the CAA requires states to develop and submit to the EPA a SIP to ensure that state air quality meets National Ambient Air Quality Standards. These ambient standards currently address six criteria pollutants: carbon monoxide, nitrogen dioxide, ozone, lead,

particulate matter, and sulfur dioxide. Each federally-approved SIP protects air quality primarily by addressing air pollution at its point of origin through air pollution regulations and control strategies. The EPA approved SIP regulations and control strategies are federally enforceable.

*B. Prior Federal Action*

Under Section 165 of the Clean Air Act, PSD permit applications must contain air quality monitoring data representing air quality in the area affected by the proposed source for the 1-year period preceding receipt of the application. In 2010, the EPA promulgated regulations for PSD PM<sub>2.5</sub> permits which included two screening tools: SILs and SMCs. These tools were established to determine whether a PSD permit application may be exempted from the 1-year air monitoring requirement for PM<sub>2.5</sub> based on the grounds that the increase of the pollutant is *de minimis*. In response to a request from the EPA and a petition, the United States Court of Appeals for the District of Columbia Circuit (the Court) vacated and remanded to the EPA the portions of the 2010 PSD regulations establishing the PM<sub>2.5</sub> SILs and SMC.

In response to the Court's decision, the EPA amended its regulations to remove the PM<sub>2.5</sub> SILs and SMC provisions. *See* 78 FR 73702, December 9, 2013. More detail about this action is available in our Technical Support Document, which is available in our rulemaking docket.

*C. New Mexico's Submittals*

On May 23, 2011, New Mexico submitted revisions to its air permitting regulations at 20.2.74 NMAC that reflected the PM<sub>2.5</sub> SILs and SMC screening tools. On January 22, 2013, the EPA approved all of the May 23, 2011 submission except for the portion that relates to the screening tools. *See* 78 FR 4339. On August 6, 2014, in accordance with the EPA's changes to the federal regulations, New Mexico submitted revisions to 20.2.74 NMAC to remove the PM<sub>2.5</sub> SILs and SMC which had previously been adopted and submitted as a SIP revision. More detail

about these actions is available in our Technical Support Document, which is available in our rulemaking docket.

## **II. The EPA's Evaluation**

### *A. Revisions to 20.2.74.303 NMAC, submitted May 23, 2011, and August 6, 2014*

The May 23, 2011, submittal added language to paragraph A, implementing the ambient air impact analysis exemption for major sources or major modifications established by the EPA in the PM<sub>2.5</sub> PSD Increment – Significant Impact Levels (SILs)—Significant Monitoring Concentration (SMC) Rule. The August 6, 2014, submittal removes the language pertaining to the PM<sub>2.5</sub> SIL. The May 23, 2011, submittal also replaces the term “particulate matter” with “PM<sub>10</sub>” in paragraph A.

The submitted regulations are approvable because they remove the PM<sub>2.5</sub> SIL consistent with the EPA's December 9, 2013, revisions to 40 CFR 51.166(k) and were adopted and submitted in accordance with sections 110 and 165 of the Clean Air Act.

### *B. Revisions to 20.2.74.503 NMAC, submitted May 23, 2011, and August 6, 2014*

The May 23, 2011, submittal added a line to TABLE 3 – SIGNIFICANT MONITORING CONCENTRATIONS, including the pollutant PM<sub>2.5</sub>, its Air Quality Concentration of 4 micrograms per cubic meter and an associated 24 hour Averaging Time. The August 6, 2014, submittal removes the PM<sub>2.5</sub> SMC by changing the PM<sub>2.5</sub> Air Quality Concentration from 4 micrograms per cubic meter to 0, and removes the “24 hours” from the PM<sub>2.5</sub> Averaging Time column. The May 23, 2011, submittal also replaced the term “particulate matter” with “PM<sub>10</sub>.”

The submitted regulations are approvable because they remove the PM<sub>2.5</sub> SMC consistent with the EPA's December 9, 2013, revisions to 40 CFR 51.166(i)(5)(i) and were adopted and submitted in accordance with sections 110 and 165 of the Clean Air Act.

### III. Final Action

We are approving revisions to the New Mexico SIP that pertain to changes to 20.2.74 NMAC submitted May 23, 2011, and August 6, 2014. Specifically, we are approving the revisions to 20.2.74.303 NMAC - Ambient Impact Requirements, paragraph A and 20.2.74.503 NMAC Table 3 – Significant Monitoring Concentrations. The EPA has made the determination that the submitted regulations are approvable because the submitted rules were adopted and submitted in accordance with the CAA and are consistent with the EPA's regulations regarding PSD permitting for PM<sub>2.5</sub> emissions.

The EPA is publishing this rule without prior proposal because we view this as a non-controversial amendment and anticipate no adverse comments. However, in the proposed rules section of this **Federal Register** publication, we are publishing a separate document that will serve as the proposal to approve the SIP revision if relevant adverse comments are received. This rule will be effective on **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]** without further notice unless we receive relevant adverse comment by **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. If we receive relevant adverse comments, we will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. We will address all public comments in a subsequent final rule based on the proposed rule. We will not institute a second comment period on this action. Any parties interested in commenting must do so now. Please note that if we receive relevant adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, we may adopt as final those provisions of the rule that are not the subject of an adverse comment.

#### **IV. Incorporation by Reference**

In this rule, we are finalizing regulatory text that includes incorporation by reference. In accordance with the requirements of 40 CFR 51.5, we are finalizing the incorporation by reference of the revisions to the New Mexico regulations as described in the Final Action section above. We have made, and will continue to make, these documents generally available electronically through *www.regulations.gov* and/or in hard copy at the EPA Region 6 office.

#### **V. Statutory and Executive Order Reviews**

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);

- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

The Congressional Review Act, 5 U.S.C. section 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States



prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a “major rule” as defined by 5 U.S.C. section 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION OF THIS DOCUMENT IN THE FEDERAL REGISTER]**. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

**List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Incorporation by reference, Particulate matter, Reporting and recordkeeping requirements.

Dated: June 30, 2015.

**Ron Curry,**  
*Regional Administrator, Region 6.*

40 CFR Part 52 is amended as follows:

**PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS**

1. The authority citation for Part 52 continues to read as follows:

**Authority:** 42 U.S.C. 7401 *et seq.*

**Subpart GG—New Mexico**

2. Section 52.1620 in paragraph (c), first table, is amended by revising the entry “Part 74, Permits—Prevention of Significant Deterioration” under “New Mexico Administrative Code (NMAC) Title 20—Environment Protection Chapter 2—Air Quality” to read as follows:

**§ 52.1620 Identification of plan.**

\* \* \* \*

(c) \* \* \*

**EPA APPROVED NEW MEXICO REGULATIONS**

State citation	Title/subject	State approval/ effective date	EPA approval date	Comments
<b>New Mexico Administrative Code (NMAC) Title 20—Environment Protection Chapter 2—Air Quality</b>				
* * * *				
Part 74	Permits— Prevention of Significant Deterioration	7/11/2014	<b><u>[Insert date of publication in the Federal Register] [Insert Federal Register citation]</u></b>	Revisions to 20.2.74.7(AZ)(2)(a) NMAC submitted 1/8/2013, effective 2/6/2013, are NOT part of SIP. 20.2.74.7(AZ)(2)(a) NMAC submitted 5/23/2011, effective 6/3/2011, remains SIP approved.
* * * *				

\* \* \* \*

[FR Doc. 2015-17058 Filed: 7/13/2015 08:45 am; Publication Date: 7/14/2015]